

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PRISCILLA SMITH-LUTCHER and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 02-1542; Submitted on the Record;
Issued November 1, 2002*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits for her accepted conditions; (2) whether appellant has established that her emotional condition is causally related to the February 8, 1999 work-related incident; and (3) whether the Office abused its discretion in denying appellant's request for reconsideration.

On December 8, 1999 appellant, then a 44-year-old clerk, filed a notice of traumatic injury and claim for compensation, alleging that she fell backwards during the performance of her federal duties. The Office accepted appellant's claim for multiple contusions. She stopped work the same day and has not returned to work. Appropriate benefits were paid.

Appellant's treating physician, Dr. Jason Smith, an osteopath, opined that appellant had ongoing conditions, including post-traumatic stress disorder and fibromyalgia, causally related to her work-related injury on February 8, 1999 and was totally disabled.

The Office referred appellant, together with the medical reports of file and a statement of accepted facts, to Dr. Julie M. Wehner, a Board-certified orthopedic surgeon, for a second opinion. In a report dated July 16, 1999, she related appellant's history, symptoms and findings on examination and, after reviewing the medical records and objective tests, opined that appellant could return to full duty without restrictions. Dr. Wehner noted subjective complaints of pain and some soft tissue complaints of pain due to muscle tightness and deconditioning. Dr. Wehner recommended a physical therapy program aimed more at exercise. She recommended an evaluation by an ophthalmologist or a neurologist due to appellant's headaches, eye pain and the dots that she sees in front of her eyes.

The Office determined that there was an unresolved conflict in medical opinion and referred appellant, together with the case record and a statement of accepted facts, to Dr. David M. Shenker, a Board-certified neurologist, for an impartial medical evaluation

In a report dated April 16, 2001, Dr. Shenker related appellant's history. He described his findings on examination and summarized the medical record. Dr. Shenker advised that he reviewed the statement of accepted facts in addition to appellant's job description as a clerk. He opined that despite appellant's ongoing subjective complaints, her neurologic examination was entirely within normal limits. Dr. Shenker advised that he could not relate any of her current complaints to the fall of February 8, 1999. Additionally, appellant demonstrated inconsistencies on her physical examination, which suggested that she was being less than maximally cooperative. Dr. Shenker opined that appellant was capable of returning to work without any restrictions and that she was not in need of any additional treatment or diagnostic studies. He further opined that he could not relate any treatment for a psychiatric diagnosis to the fall on February 8, 1999.

On June 12, 2001 the Office proposed to terminate appellant's compensation and medical benefits. The Office found that the weight of the medical evidence rested with the impartial medical examiner, Dr. Shenker. In a letter dated June 13, 2001, appellant expressed her disagreement with the proposed decision and submitted a Form CA-7.

By decision dated July 13, 2001, the Office terminated appellant's compensation and medical benefits on the basis that she had no further residuals of her February 8, 1999 work injury.

Appellant disagreed with the above decision and submitted additional medical evidence.

In an October 10, 1999 report, Dr. Robert A. Greendale, a Board-certified neurologist and psychiatrist, noted that he originally diagnosed appellant with post-traumatic stress disorder on her first visit on June 4, 1999. He added the additional diagnosis of delusional disorder. Dr. Greendale stated that the original diagnosis was substantiated by the fact that appellant stated that she was having recurrent dreams where she relived falling down an escalator and was harassed by her supervisor, Lynn Johnson. More recently, appellant described fears that people were breaking into her house and outside of the house watching her, which demonstrated ideas of reference and clear paranoia. As a result, the second diagnosis was added. Dr. Greendale advised that appellant denied any previous psychiatric history prior to February 1999 and had no previous psychiatric counseling or treatment other than a brief encounter with a therapist in 1996 around issues of divorce. Dr. Greendale opined that all of appellant's psychiatric symptoms were a result of the episode that occurred on February 8, 1999 where she fell down the escalator. He noted that appellant's psychiatric disorder seems to be getting progressively worse. Given her symptomatology, which included paranoia, difficulty in sleeping, tearfulness, fearfulness and ideas of reference, Dr. Greendale opined that appellant was totally disabled with regard to returning to her job.

In a June 25, 2001 report, Dr. Charles Turk, a Board-certified neurologist and psychiatrist, noted that he reviewed Dr. Smith's summary of appellant's case dated September 10, 2000, Dr. Greendale's report of October 10, 1999, the notice of proposed termination of benefits dated June 12, 2001 and the April 13, 2001 report of Dr. Shenker and the July 16, 1999 report of Dr. Wehner. Dr. Turk noted that Dr. Smith had been treating appellant for chronic pain since she fell on February 8, 1999 as the result of an escalator that malfunctioned. Dr. Turk noted that appellant described the event in a remarkable way,

“something snapped in my head -- God sent two ladies to hell -- the Devil was trying to eat me up -- the escalator kept trying to eat me up. My supervisor visited me in the hospital and stared at me with red eyes. Later she snatched some papers from me and hit me in the chest.” Dr. Turk noted that immediately following the accident she manifested symptoms of a post-traumatic state characterized by poor sleep interrupted by nightmares. Dr. Turk noted that her symptoms continued unabated to the present and, on examination, appellant was guarded and in obvious discomfort. When asked what would happen if she returned to work, appellant stated: “They will get rid of me -- they [will] take me back to the same spot (the escalator) and push me down; this time they will finish it.” Dr. Turk opined that appellant suffered from a delusional disorder, persecutory and somatic, that was precipitated by the accident involving the escalator. He opined that the combination of physical pain and paranoid ideation involving personnel at her workplace rendered her unable to return to work.

In a July 18, 2001 report, Dr. Smith diagnosed delusional disorder with somatic dysfunction, post-traumatic fibromyalgia syndrome, chronic left rotator cuff lesion and mealier/myositis and to opine that appellant was totally disabled. He further noted that her clinical course was complicated by her psychiatric condition required separate psychiatric management. Dr. Smith opined that a clear “cause and effect” relationship between appellant’s fall and her psychiatric condition has been established as noted by Dr. Greendale and Dr. Turk.

The Office referred appellant, together with the medical record, a statement of accepted facts and a list of questions, to Dr. Amin N. Daghestani, a Board-certified psychiatrist. In a report dated September 3, 2001, he stated that, based on his mental status examination and review of records, appellant sustained a post-traumatic stress disorder as well as a delusional disorder. He noted that appellant had a chronic pain syndrome and psychosocial stressors. Dr. Daghestani opined that the employment incident of February 8, 1999 directly caused the psychiatric disorder. He indicated that there was no prior psychiatric history. Dr. Daghestani’s opinion that the explanation that was made by Dr. Turk in his letter dated June 25, 2001 was correct in showing how the specific contributing work factors contributed to appellant’s psychiatric condition. Dr. Daghestani further opined that appellant was totally disabled.

In a letter dated November 28, 2001, the Office requested Dr. Daghestani to clarify his opinion. The Office noted that Dr. Daghestani quoted Dr. Turk’s opinion regarding causal relationship, but explained that he needed to provide his own medical rationale for causal relationship. The Office further noted the fact that there was no prior psychiatric history insufficient to establish causal relationship.

In a December 10, 2001 report, Dr. Daghestani again opined that the work-related incident of February 8, 1999 had a direct relationship to appellant’s psychiatric diagnosis. He noted that shortly after the work-related incident, appellant developed symptoms of sleep problems and nightmares of “falling.” Also, shortly after February 8, 1999 she developed hearing voices.

By letter dated January 22, 2002, the Office advised appellant that another second opinion examination was required to determine whether or not her psychological condition was related to the injury of February 8, 1999. The Office noted that Dr. Daghestani failed to provide medical reasoning to explain how her condition was related to the injury of February 8, 1999.

The Office referred appellant, along with the medical record, a revised statement of accepted facts and list of questions, to Dr. Dixon F. Spivy, a Board-certified psychiatrist, for a second opinion evaluation.

In a March 5, 2002 report, Dr. Spivy stated that he evaluated appellant and reviewed the files sent him along with the statement of accepted facts. He noted that, while appellant has been physically cleared to return to her regular job, apparently the psychiatrists believed that she had a combination of diagnoses, including post-traumatic stress disorder, delusional disorder and depression. He diagnosed psychotic disorder, not otherwise specified, with a possible alternative schizophrenia, disorganized type along with a personality disorder. Dr. Spivy opined that it was uncertain whether there was any real connection with the escalator trauma, which may or may not have occurred as appellant described it. He opined that the escalator trauma was a coincidental factor and there did not seem to be any contributing work factors other than as described. Dr. Spivy opined that appellant would have become much as she is today, noting that there was a mere connection between what were apparently rather minor injuries. He said that translating this into a post-traumatic stress disorder was “rather a stretch.” Dr. Spivy stated that he did not think appellant sustained a post-traumatic stress disorder and had never encountered any condition secondary to a minor stress that would compare with appellant’s currently very disturbed mental state. Dr. Spivy opined that appellant was disabled in terms of her mental state and she could not return to her job at the employing establishment. He noted that she came across as typical of a schizophrenic disorder, but it would be unusual for her to descend into this level of apparent chronicity so quickly at her age, but it was not unknown. Dr. Spivy opined that although appellant was psychotic, her present condition was the natural progression of disease he suspected was beginning much earlier. Dr. Spivy reiterated his opinion that appellant’s current condition was not causally related to the work injury.

By decision dated March 21, 2002, the Office denied modification of its previous decision finding that appellant’s work-related residuals had resolved. The Office further denied appellant’s claim that her emotional condition was causally related to the incident of February 8, 1999, finding that the weight of the medical opinion evidence rested with the opinion of Dr. Spivy.

In a letter dated April 5, 2002, appellant’s representative requested reconsideration and submitted legal arguments. Appellant also submitted a letter expressing her disagreement with Dr. Spivy’s report and the Office’s decision.

By decision dated May 2, 2002, the Office denied modification of the March 21, 2002 decision.

The Board finds that the Office properly terminated compensation benefits for the accepted conditions of multiple contusions.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.² The Office's procedure manual provides that, having accepted a claim and initiated payments, the Office may not terminate compensation without a positive demonstration, by the weight of evidence that entitlement to benefits has ceased.³

The Office accepted that appellant sustained multiple contusions on February 8, 1999, while in the performance of her duties. To resolve a conflict between appellant's attending physician, Dr. Smith, an osteopath, and the Office referral physician, Dr. Wehner, a Board-certified orthopedic surgeon, on the issue of continuing disability, the Office referred appellant, together with the case record and a statement of accepted facts to Dr. Shenker, a Board-certified neurologist, for an impartial medical opinion. In his April 16, 2001 report, Dr. Shenker related appellant's history, described his findings on examination and summarized certain medical records. He opined that there were no findings of cervical or lumbar strain occurring on December 24, 1991. Dr. Shenker stated that the cervical and lumbar strain sustained in the work-related accident of 1991 had resolved. Dr. Shenker opined that appellant's examination was within normal limits and he could not relate her current complaints to the accepted injury. He found she could return to work without restriction and required no further treatment.

When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁴ The Board finds that Dr. Shenker's opinion is based on a proper background and is sufficiently rationalized to establish that appellant no longer continues to suffer from the accepted conditions of multiple contusions. Dr. Shenker's opinion thus, constitutes the weight of the medical evidence and establishes that appellant is no longer disabled due to her accepted employment injuries.

The additional medical evidence appellant submitted fails to provide a well-rationalized opinion as to how or why appellant continues to have residuals of her accepted conditions of multiple contusions. Although Dr. Smith opined that appellant's medical conditions were due to the work injury of February 8, 1999 and she was totally disabled there from, the Board notes that as Dr. Smith is appellant's attending physician and was on one side of the medical conflict which was resolved by Dr. Shenker. His July 18, 2001 report is not to be used to overcome the probative value of the referee physician's opinion.⁵ Additionally, his report lacks any objective findings to support any ongoing disability causally related to the accepted work conditions and

² *Patricia A. Keller*, 45 ECAB 278 (1993); *Regina C. Burke*, 43 ECAB 399 (1992); *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Cases*, Chapter 2.812.3 (July 1993).

⁴ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

⁵ *Virginia Davis-Banks*, 44 ECAB 389, 392 (1993).

the injury of February 8, 1999 and, thus, is afforded diminished probative value. The other reports submitted concern appellant's psychiatric condition and will be addressed below.

The Board further finds that the case is not in posture for decision of whether appellant has established that her emotional condition is causally related to the February 8, 1999 work-related incident due to a conflict in the medical evidence.⁶

The Board notes that in the course of developing appellant's emotional claim, she was referred to two Office referral physicians for second opinion examinations. In his September 3, 2001 report, Dr. Daghestani failed to provide a rationalized opinion regarding causal relationship, thus his report was of diminished probative value. In his supplemental report of December 10, 1999, he noted the symptoms appellant developed shortly after the work incident of February 8, 1999, but he failed to provide a well-rationalized opinion addressing the causal relationship of appellant's psychiatric condition. Accordingly, the supplemental report is also of diminished probative value. As Dr. Daghestani's reports lacked medical rationale, the Office properly referred appellant to another medical specialist for a second opinion examination.

The Board finds that the medical opinions of Drs. Smith and Greendale are of limited probative value in establishing whether appellant's psychiatric condition is causally related to the work incident of February 8, 1999. Although Dr. Smith noted in his July 18, 2001 report that there was a clear cause and effect relationship between appellant's fall and psychiatric condition, his opinion regarding appellant's psychiatric condition is of reduced probative value as he is not a specialist in the appropriate field⁷ and because he failed to provide medical rationale for his opinion on causal relationship.⁸ Although Dr. Greendale noted in his October 10, 1999 report that all of appellant's psychiatric symptoms had their onset as a result of the February 8, 1999 episode, he appears to attribute this to the fact that she had no prior psychiatric history. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁹ Dr. Greendale's support based on such reasoning is of diminished probative value.

The Board finds that there is a conflict between Dr. Spivy, a Board-certified psychiatrist, and Dr. Turk, a Board-certified psychiatrist, with regard to whether appellant's psychiatric condition is related to the work incident of February 8, 1999. Dr. Spivy found that appellant's ongoing psychiatric condition was the natural progression of a preexisting disease and opined that the escalator trauma of February 8, 1999 was merely a coincidental factor. He opined that

⁶ 5 U.S.C. § 8123 states: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

⁷ See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (the opinions of physicians who have training and knowledge in a specialized medical field have greater probative value concerning questions peculiar to that field than the opinions of other physicians); see also *Elmer L. Fields*, 20 ECAB 250 (1969).

⁸ *William C. Thomas*, 45 ECAB 591 (1994).

⁹ See *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

appellant would have reached her current disturbed mental state if the February 8, 1999 incident never occurred.

Dr. Turk opined that appellant's psychiatric condition was related to the February 8, 1999 incident by direct causation and aggravation.¹⁰ Dr. Turk opined that prior to the trauma of February 8, 1999, appellant most likely had a psychotic structure without manifest symptoms. He found that the connection between her psychiatric condition and her physical pain was demonstrated by numerous symptoms such as poor sleep, nightmares, black spots, which immediately followed the February 8, 1999 incident. Dr. Turk further found that the physical injury appellant suffered produced pain, which became enmeshed in appellant's delusion and rendered it resistant to intervention. He concluded that the combination of appellant's physical pain and her paranoid ideation involving personnel at her workplace rendered her totally disabled.

On remand the Office should refer appellant, together with the case record and a statement of accepted facts, to a Board-certified specialist in the appropriate field of medicine, to resolve the conflict regarding whether appellant's emotional condition was caused or aggravated by her employment. After such development as it deems necessary, the Office should issue a *de novo* decision.¹¹

¹⁰ Where the record supports aggravation or acceleration of an underlying condition, which precipitates disability, the resultant disability is compensable regardless of the precise quantum of such aggravation directly attributable to the employment. No attempt should be made to apportion disability between the preexisting condition and aggravation of that condition. *Henry Klaus*, 9 ECAB 333 (1957).

¹¹ In light of the disposition of this case, the Board need not address the third issue of whether the Office abused its discretion in denying appellant's request for reconsideration of its March 21, 2002 decision.

The decisions of the Office of Workers' Compensation Programs dated May 2 and March 21, 2002 and July 13, 2001 are affirmed as to the issue of termination of appellant's accepted conditions but this case is to be remanded for resolution of the conflict in medical opinion regarding whether appellant's claimed emotional condition is causally related to the February 8, 1999 employment incident.

Dated, Washington, DC
November 1, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member